IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 255 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHOR RATILAL NATHWANI

Versus

JAYAKUMAR JETHALAL

Appearance:

1. Civil Revision Application No. 255 of 1983

MR SHIRISH JOSHI for Petitioner No. 1-2

RULE SERVED for Respondent No. 1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/08/2002

ORAL JUDGEMENT

Learned advocate Mr. Shirish Joshi appearing for the petitioners has, at the outset, mentioned that both the respondents have died pending this Revision

Application. He has stated that the respondent no. 1 has died somewhere in the year 1990; while the respondent no. 2 has passed away some two months ago. Mr. Joshi, however, has submitted that the petitioners are not aware who the heirs of these respondents are. The Revision Application is pending before this Court for nearly 20 years. The respondent no.1 has died before 12 years. If the petitioners have not made effort to implead the legal representatives of the deceased respondent no.1 till this date, no fruitful purpose shall be served by adjourning the matter further. The presence of the respondents shall be required only in case the Revision Application deserves to be allowed. The matter shall, therefore, proceed on merits.

The present Revision Application has been preferred under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates control Act, 1947 [hereinafter referred to as, "the Rent Act"] against the judgment and order dated 31st January, 1983 passed by the learned Joint District Judge, Rajkot in Civil Appeal No. 227 of 1980 .

The respondents were the original plaintiffs. The respondents [hereinafter referred to as, "the Plaintiffs"] had instituted Rent Suit No. 226 of 1979 [earlier no. 630 of 1976] in the Court of Small Causes at Rajkot. It was the claim of the plaintiffs that the plaintiff no. 1 was the owner of the suit premises comprising of a residential house consisting of one room, Osri and kitchen. The suit premises was given to the defendants [the present petitioners] on rent of Rs. 90/= per month; that, the defendants were in arrears of rent since 1st June, 1975 i.e., for more than six months; that, the defendants did not respond to the suit notice and did not remit the arrears of rent till the date of the suit. The plaintiff no. 2 used to manage and collect the rent for the suit premises. Therefore, the suit.

The defendants contested the suit by filing written statement at Exh.25. The defendants denied the allegations made by the plaintiff and also raised the dispute as regards the standard rent of the suit premises.

The learned trial Judge, under the judgment and order dated 4th March, 1980, was pleased to hold that the defendants were tenants for a monthly rent; the defendants were in arrears of rent for more than six months and that the defendants had not raised the dispute

as regards the standard rent within one month from the date of receipt of the suit notice. The Court, therefore, passed decree for possession as well as for arrears of rent. Feeling aggrieved, the defendants preferred Regular Civil Appeal No. 227 of 1980 before the District Court, Rajkot. The said Appeal was dismissed by the learned Jt. District Judge, Rajkot under the impugned judgement and order dated 31st January, 1983. Feeling aggrieved, the defendants have preferred the present Revision Application.

It is not disputed that the tenancy was on a monthly rent and; that on the date of the suit the defendants were in arrears of rent for more than six months. It is also not disputed that in answer to the suit notice, the defendants neglected to pay the rent as demanded. Moreover, Mr. Joshi has submitted that even pending this Revision Application, the defendants have stopped depositing the rent in the trial Court, since the death of the respondent no. 1-the land lady, in the year 1990.

This Court in the matter of Mohammedbhai S. Sheikh v. Vrajlal Mathurdas [2002 (2) GLH 274] has, following the judgment of the Hon'ble Supreme Court in the matter of Raju Kakara Shetty v. Ramesh Prataprao Shirole [(1991) 1 SCC 570], held that, "that in a case where monthly rent includes municipal taxes, the rent is still payable by the month". In such a case, the provisions applicable would be section 12 (3) (a) of the Rent Act and not section 12 (3)(b) of the Rent Act.

Further, this court as far back as in the matter of Shah Ambalal Chhotalal v. Shah Babaldas Dahyabhai [3 GLR 625] and as late as in the matter of Heirs of Kasiben C. Chhaganlal D/o. Chimanlal Chhaganlal v. Heirs of Bapulal Kalidas [2001 GLR 1320] has held that dispute as to the standard rent, if any, has to be raised either by replying the suit notice or by making specific application before the court. Mere raising a plea in the written statement would not be sufficient to entitle the defendant-tenant to protection under section 12 (3)(b) of the Act.

In view of the above admitted facts and the legal position, both the Courts below have rightly passed the decree for possession in favour of the plaintiffs. No interference is warranted. Hence, the Civil Revision Application is dismissed with costs. Rule is discharged. Ad-interim relief stands vacated.

[Ms. R.M Doshit, J.]

Prakash*